



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
NOVEMBER 19, 2003**

PRESENT: David Gulino, Chairman
Steve Steinberg, Vice Chairman
David Barnett, Commissioner
James Heitel, Commissioner
Eric Hess, Commissioner
Tony Nelssen, Commissioner

ABSENT: Jeffery Schwartz, Commissioner

STAFF: Suzanne Colver
Tim Curtis
Pete Deeley
Randy Grant
Pat Boomsma
Kira Wauwie
Al Ward
Joe Morris

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

APPROVED

MINUTES APPROVAL

November 5, 2003

COMMISSIONER HEITEL MADE A MOTION TO APPROVE THE NOVEMBER 5, 2003 MINUTES AS PRESENTED. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

EXPEDITED AGENDA

26-UP-2003 (AZ On the Rocks) request by AZ On the Rocks, applicant, Pavo Industrial LLC, owner, for a conditional use permit for a health studio on a 4.3 +/- acre parcel located at 16447 N 91st Street with Industrial Planned Community District (I-1 PCD) zoning.

8-AB-2003 (SLAGER RESIDENCE) request by Don and Kim Slager, applicant/owner, to abandon the west 33-foot wide General Land Office patent roadway and public utility easements for parcel 217-31-019A, 12953 E Cochise Road located south of Cochise Road and west of 130th Street.

(PULLED TO REGULAR AGENDA)

5-ZN-2000#2 (Bell/101 Executive Center) request by Cawley Architects Inc, applicant, Shemer Real Estate LLC, owner, for site plan amendment to 5-ZN-2000 on a 7.7 +/- acre parcel located at 8825 E Bell Road with Highway Commercial Planned Community District (C-3 PCD) zoning for development of office buildings.

15-ZN-2003 (North Scottsdale Collision) request by Archicon LC, applicant, LGE Corporation, owner, to rezone from Highway Commercial District (C-3) to General Commercial District (C-4) on a 1.15 +/- acre parcel located at 15450 N 48th Street.

(PULLED TO REGULAR AGENDA)

COMMISSIONER HEITEL MOVED TO FORWARD CASE 26-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL SUBJECT TO IT MEETS THE USE PERMIT CRITERIA. MOVED TO FORWARD CASE 5-ZN-2000#2 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

REGULAR AGENDA

8-AB-2003 (SLAGER RESIDENCE) request by Don and Kim Slager, applicant/owner, to abandon the west 33-foot wide General Land Office patent roadway and public utility easements for parcel 217-31-019A, 12953 E Cochise Road located south of Cochise Road and west of 130th Street.

MS. COLVER presented this case as per the project coordination packet. Staff recommends approval.

COMMISSIONER NELSEN stated this was the first time he had ever seen the word federal patent put in the document. He further stated that he had concerns regarding the city abandoning a federal patent easement.

Commissioner Nelsen inquired if there was a GLO existing currently on the adjacent property to the west. Ms. Colver replied in the negative stating she believed it has been abandoned. Commissioner Nelsen inquired if their structure was encroaching on the GLO easement. Ms. Colver stated her understanding was that there was not a structure over the easement. She further stated their interest in abandoning the GLO is to be able to finish their backyard, which is currently dirt yard.

Commissioner Nelsen stated he received a two-page letter from John Aleo. He read a portion of the letter that states there are no provisions in federal law to abandon or remove said patent easements from a plat of survey. The beneficial interest held by the affective parties in patent easement is a private access right and private property right passed on through the deed. The letter also states that to block, impede, or interfere with the GLO patent easement is a violation of those rights and upheld by the courts. The letter also indicates that there might be a problem with the title on the property.

COMMISSIONER HEITEL stated he would like to clarify for the record that the Commission is being asked to revoke the City of Scottsdale's interest in the GLO easement. He inquired if the City of Scottsdale has a policy when site plans are submitted that all easements are recorded on site plan. Ms. Colver stated they do require public easements be shown but if it is abandoned they would not still require them to show the easement. Commissioner Heitel inquired if the policy that abandoned easements are not required to be shown on the site plan made by Planning Director or if it is a policy. Ms. Colver stated she did not think it was an actual policy or something that was not specifically requested, but did not know the full answer to that question. Commissioner Heitel requested at a study session that staff provide the Commission with information regarding the City's policy with regard to showing GLO easements on site plans. Mr. Grant replied staff would be glad to provide that information at the next study session.

MR. DEELEY stated typically on site plans they do show any easements of record. When they get to the GLO abandonment, what happens from a policy point of view the city has abandoned the public interest in the easement. It is making no determination whether there is any private interest and that is the reason it would not be required to show on a site plan or survey map.

VICE CHAIRMAN STEINBERG inquired if they were required to go through a federal process to get a GLO abandonment in addition to the city process. Mr. Deeley stated in the past, they have found it difficult to get a response back from the federal people. Once the patent is in place the federal government does not want anything to do with it and stated it is part of whatever jurisdiction it comes under based on it is a public type of situation or based on case law. He noted the case law is mixed.

COMMISSIONER HEITEL stated they continue to see cases where backyard improvements, pools, and accessory structures are being constructed in areas of potential federal easements. He further stated his question still remains why does the city arbitrarily make this determination that potentially federal easements should be eliminated from the site plan. Mr. Deeley stated he felt their public process is designed to determine if there is any interest out there for the property or surrounding property to bring those interests forward. The owner is also required to notify all of the surrounding property owners.

KIM SLAGER, 12953 E. Cochise Road, applicant, stated this is a simple request they have four children and they would like the kids to have pool, trampoline, sport court and grass area to play. She further stated the easement behind them has been released. They are the only ones in the area that have not had it released.

COMMISSIONER NELSEN stated he is a GLO property owner and has had his easement abandoned through the city and his attorney told him his neighbors have the right to use it and there is nothing he could do about it. He inquired if when Ms. Slager goes to sell this property if she would tell the potential buyer there was a patent easement that their neighbor could drive a truck over. Ms. Slager stated she just bought this house a month ago and they told her that.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

LEON SPIRO, 7814 E. Oberlin Way, spoke in opposition to this request. He inquired about the mixed case law Mr. Deeley was referring to. He inquired if there was plat plan easement showing when this house was permitted. He inquired if any of them would buy a home sitting in a GLO easement. He stated he thought a portion of the Slager's home was sitting in the GLO easement. Did the city approve the construction in the GLO easement? The case law does not go away even after the city abandons the public interest. If the roadway

abandonment is approved tonight just what is the city abandoning. He inquired when the Slager's purchased this home if it was disclosed to them that the house encroached the roadway.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

DAVE NELSON stated he built this home and the Slager's purchased it. It does not encroach into the GLO easement.

MS. SLAGER stated that she also did research on this whole issue before they bought this home. When they were told there was a GLO easement they panicked and wanted to back out of the deal because of what they wanted to do with the back yard for their kids. In their investigation on these GLO easements they learned they were put in place for farmers for their sheep to pass through. She further stated if you look in the area, all the sheep are gone.

COMMISSIONER NELSEN stated he would not be supporting this because he has not supported any GLO abandonment cases. He further stated GLO patent easements most of which are for the purpose of roadway and public utility easements if people chose to drive sheep or ride horses or move cattle that was fine but that was not the intent.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 8-AB-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH A CLARIFICATION THAT IT IS A REVOCATION OF THE CITY INTEREST IN THAT EASEMENT.

MS. BOOMSMA stated that is all that the city has the power to do is revoke the city's interest.

COMMISSIONER HEITEL stated it would be helpful if that was stated in the request when it is brought before them. Chairman Gulino noted that is in the report.

SECOND BY COMMISSIONER HESS.

COMMISSIONER NELSEN stated the request is for an abandonment and the motion states revocation. He inquired if there was a difference. Ms. Boomsma stated the terms are used interchangeably in City Code what it is giving up the city's interest. The only thing the city has the power to do is give up its own interest. Commissioner Nelsen stated that he wanted to make it clear on the record that there is not distinction between the word revocation and abandon in this matter.

CHAIRMAN GULINO called for the vote.

APPROVED

THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1) WITH COMMISSIONER NELSEN DISSENTING.

CHAIRMAN GULINO inquired if they have a letter on file from the existing utility company that they have abandoned their interest. Mr. Deeley replied in the affirmative.

COMMISSIONER NELSEN inquired what would happen if several years from now another utility company that has not abandoned their interest wants to use the public utility easement after the city has abandoned it and granted a building permit. Mr. Deeley replied he did not have an answer to that question.

15-ZN-2003 (North Scottsdale Collision) request by Archicon LC, applicant, LGE Corporation, owner, to rezone from Highway Commercial District (C-3) to General Commercial District (C-4) on a 1.15 +/- acre parcel located at 15450 N 48th Street.

MS. COLVER presented this case as per the project coordination packet. She provided information on the Regional Use designation. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER BARNETT inquired what constitutes regional. He reviewed the General Plan criteria noting this request did not meet all of the criteria. He also inquired in this regional use overlay area if there were other businesses that are similar in nature to this type of business. Ms. Colver stated that she was not aware if there is an auto body collision shop in that area. She further stated she is aware of other uses in the area that would not strictly be defined the way General Plan defines regional by meeting every single criteria but in many cases they are supportive of the uses already there. Mr. Grant discussed the types of uses in that area. He stated this is not out of character with what else is in the area.

COMMISSIONER HEITEL stated he felt it fits the criteria to the extent that it is an auxiliary use to a lot of the regional uses.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 15-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY VICE CHAIRMAN STEINBERG.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1) WITH COMMISSIONER BARNETT DISSENTING.

3-ZN-2003 (City View Estates) request by Catalyst LLC, applicant/owner, to rezone from Single Family Residential, Environmentally Sensitive Lands District (R1-190 ESL) to Single Family Residential, Environmentally Sensitive Lands

District (R1-70 ESL) on a 19 +/- acre parcel located at the southwest corner of Happy Valley and Alma School Roads.

MR. CURTIS presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

VICE CHAIRMAN STEINBERG inquired if there was a site plan that shows the layout for the proposed nine lots. Mr. Curtis stated the applicant did work with staff on various site plans so he will be presenting some alternative design proposals. The ones they were working with helped them get to the stipulations for the development scenario they expect from the applicant.

Vice Chairman Steinberg inquired if the area has changed enough to warrant the up zoning. Obviously, staff has endorsed but it was zoned R1-190 for a reason and there were a lot of people who bought in that area for a reason. Now, they are proposing that the charm of the five acre zoning change. He inquired if there was a reason because areas have gone through a metamorphosis so to speak. Mr. Curtis stated staff looked at the General Plan and some goals of that as well as the surrounding areas and the stipulations they put in terms of meeting the buffer and NAOS and the zoning district being proposed is consistent with the General Plan. They felt this proposal with the commitments and the stipulations is compatible and appropriate for the area.

Vice Chairman Steinberg inquired if they grant this approval would it set precedence for other five acre areas to come in for up zoning to twice the density. Mr. Curtis stated as far as precedence, they look at everything on a case by case basis.

COMMISSIONER NELSSSEN requested staff speak to the broader community benefits there would be from this project. Mr. Curtis stated some of the key components they worked through with the applicant are the addition of NAOS and they would provide individual buffer around the property. They would keep the building envelopes further away from the perimeter of the property. There would also be a right-of-way dedication around the property. Commissioner Nelssen stated the trail dedication would be dedicated otherwise.

Commissioner Nelssen stated this is an enticing package but relative to open space of golf courses, and the five acres zoning and the large lot development to the west it doesn't seem that this really constitutes as a community benefit it is almost a deficit. He further stated that he understands they don't have to leave that much NAOS but generally, they do if you go through there. Mr. Grant stated he thought it was a trade off. With regard to balance they don't think the density is out of character with what is on the north side of Happy Valley and on the east side of Alma School to that end they are suggesting this evening they not look at site plan. He stated he was not comfortable with where they are on the site plan

that it reflects their commitments with ESLO. They are hoping this evening to discuss the density issue, the land use issue.

Commissioner Nelssen stated over the past two years those issues has been related. It is hard for them to talk about land use without some inkling of what would be built on that land. He further stated he would recommend a continuance to allow them to see how the land is going to be planned.

COMMISSIONER BARNETT requested information on the wash that runs at the bottom of that property. Mr. Curtis stated the engineering report shows the flow was cut off from the north to this site to 15 CFS though this wash. Commissioner Barnett stated he was referring to the area further down. Mr. Curtis stated that is a jeep trail.

COMMISSIONER NELSEN inquired why the wash flow had been cut off. Chairman Gulino stated they would have the city engineer address that issue after the applicant's presentation.

JOHN KLEE, applicant, showed a sketch of the plans for the intent of this property. He further stated they are trying to demonstrate a sensitive approach to development. He reported they would be providing 12 acres of NAOS. They are sympathetic to what the built environment might be viewed as. They are more concerned with the fragility of this desert environment. They would like to keep something more meandering random in terms of development rather than large single-family homes built on top of the sites with no respect to the land and existing forms. As they move ahead with the design criteria that would provide for shielded lighting and low light reflective values on exterior finishes. They are stressing the large amount of NAOS and the more natural approach to development. He concluded he would hope they would consider this strongly.

CHAIRMAN GULINO stated there have been issues raised about the drainage he requested staff address those issues.

JOE MORRIS provided information on how this site would be impacted by off site drainage from the north and east.

COMMISSIONER NELSEN requested staff address the comment that was made regarding water that has been cutoff from the development that occurred to the north of this property. He inquired if the water was cut off from the north how did it get cut off. Mr. Morris stated that assertion was made in the drainage report that was submitted with the application. They don't necessarily dispute that conclusion nor do they accept it. They have asked for some more analysis on the tributary to this culvert. They don't accept that water has been diverted because they have not seen adequate demonstration to support that.

CHAIRMAN GULINO inquired about the reason they did not attach a site plan to this case. Mr. Klee stated it was the Planning Department's decision to look at this in terms of zoning request and density issue and they are not willing to subscribe to any fixed site plan at this point. Chairman Gulino commented that it is out of character with what they have seen in the past few years. Mr. Grant replied Chairman Gulino was correct. He stated staff requested that the site plan not be included because he felt their previous discussions on ESL where looking at the capacity of wash rather flow of the wash. The ability to use flag lots to minimize the disturbance and minimize the amount of paving to provide access to the site. They simply did not have the information to know where the lots should be located and where access should be located.

Chairman Gulino inquired why this application was being treated differently than other cases where they might see a continuance. Mr. Grant stated he would support the continuance for the reasons that have been discussed.

COMMISSIONER HEITEL stated he would not support a continuance. He further stated that he would like to see a stake driven through the heart of this thing immediately. He remarked that a few weeks ago they had a passionate discussion about ESLO. They discussed preserving the corridors, wildlife corridors et cetera. There was discussion about giving staff additional ability to work with applicants to transfer density on properties to preserve meaningful open space. He further remarked nowhere in that discussion was it indicated that the best way to implement the wishes of ESLO was to double the density.

Commissioner Heitel stated they are asking them to double the density on a property that would probably be a template for every R1-190 property bordering this area.

Commissioner Heitel stated he has not heard a compelling reason to grant the increase in density.

COMMISSIONER BARNETT stated he appreciated the applicant's comments on sensitivity and quality. He inquired if the economics would work if they only had four houses as opposed to the nine. Mr. Klee stated there certainly is an economic line that has to be balanced in terms of land value. Could they proceed with four lots probably. He further stated it is their point of view that smaller masses stepped with the slopes would be better than large masses. He noted having more lots does have a higher economic return. Chairman Gulino stated he felt it was inappropriate for this Commission to get into the economics.

COMMISSIONER NELSEN stated that not too far down the road there is a carnival type atmosphere along the roadside and he has a concern if this project goes with double the density that everything written on those signs would come true. He further stated that he does see it as precedence setting.

Commissioner Nelssen stated the applicant has mentioned amenities for the development but other than the additional NAOS, those are prerequisites for development in the area. Mr. Klee stated he sees this as offsetting the site and having smaller masses. They are providing substantial NAOS.

COMMISSIONER HEITEL stated the applicant keeps reminding them they are providing additional NAOS but what they are really doing is setting aside an additional three acres of NAOS to double the density.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

BRIAN HILTON, 10067 E Santa Catalina, spoke in opposition to this request. He stated he would agree that it is a density issue but it is also an integrity issue. When they bought their home they researched it and the area were designated for five-acre lots and that is why they purchased in this area. He requested they deny this request.

CHARLES SMITH, 10195 E. Whispering Wind Drive, spoke in opposition to this request. He stated the zoning restrictions were a large part of their decision to buy their property. He further stated he was interested in privacy and preserving this part of Scottsdale. He commented that he was not an engineer but did not know how doubling the amount of area that can be built on would improve the drainage. He further commented he felt if this rezoning was granted the city would receive similar requests. He requested that this case be denied.

RICHARD LEDERER, 102231 E. Whispering Wind Drive, spoke in opposition to this request. He stated he thought this was a betrayal of the rules they agreed to when they purchased their property and built their home. He further stated that it is well documented that there is another 20-acre parcel between where they are and the subject property and if this goes that property probably would be next. He remarked the applicant talked about big box homes, but he does not know what he was referring to and felt that big box was an inaccurate description of those homes. He discussed his traffic concerns regarding the intersection of Happy Valley and Alma School noting that increasing the density would only add to traffic concerns.

BARBARA ROUSSO, 10801 E. Happy Valley Road, stated that she lives in Troon and her property overlooks this site. She further stated she spoke with the neighbors and not one person that she spoke to thought this was a good idea. She inquired if the roads were included in the NAOS. She concluded they want to maintain the quality of life in this area.

GEORGE DAUPHINAIS, 10801 E. Happy Valley Road, stated he moved out to this area a year and a half ago because of the zoning. He thanked certain

Commissioners' for the questions they asked. He further stated that he felt this request was to make money for the developer. He reported there is no benefit for the people in the community if the density is doubled.

MARK GRAYSON, 10375 E. Whispering Wind Drive, stated he was the developer of the subdivision he lives in. He further stated that subdivision has mixed zoning of R1-170 and R1-190 and at that time he moved the density he did not rezone the property noting that this subdivision matches every lot around it. He commented that he spoke to Mr. Klee when he first came out to the neighborhood and he told him that he was very aggressive on this. He further commented he would have bought this property if he thought he could have gotten nine lots. He reported he has bought other property in the area and would not request a zoning change. He further reported he is opposing this project because he felt it was not in character with the neighborhood. He noted he would agree with Commissioner Heitel's comments that this would be leading to a lot of larger problems in this area.

CHAIRMAN GULINO inquired about the different sizes of lots in this subdivision. Mr. Grayson replied there are 21 lots on 60 acres and the largest lots are five acres and the smallest is .8 acres and there is 60% open space.

THOMAS LONGUST, 10196 E. Whispering Wind Drive, stated they studied this area and decided to buy in this area because of the zoning. He felt if the density were to be increased, it would change the character of the area. They relied on the zoning when they purchased their property to maintain the beauty of that area.

CATHERINE PEAGLER, 9825 N. 51st Place, spoke in opposition to this request. She stated she lives in Paradise Valley but her family has owned the 20-acre property south of City View for 60 years. She further stated that she and her siblings have inherited that property and plan on building four homes on the 20-acres. She remarked she does not want to see their home sites completely changed by the development to the north if this were to be approved.

DR. RALPH EARLE, 10801 E. Happy Valley #107, stated the reason they purchased in this area was because of the low density. He further stated one of the wonderful things about living there is the wildlife and from an ecological point of view, that changes every time, they increase the density. They have an open view and purchased on the basis that the zoning would not change.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. KLEE stated with regard to the question if the roads were included in the NAOS they are not. He reviewed the neighborhood outreach that took place. He expressed his concern regarding coming to a public meeting where it has been

posted for months, and his name and phone number have been available, and he has been available. And at the time of the public hearing a number of people come forward who had not at any previous time expressed their concerns to him. He noted he would have liked to have the chance to address these issues personally. He stated they do view this 20-acre site to be outside the norm and it not sandwiched between R1-190 properties it is in a fact a buffer at the corner to greater densities.

Mr. Klee noted that around the first of the year he presented this to the full Board at Troon and they were supportive of the proposal. He further noted that a few other properties on Happy Valley Road have written letters of support. He concluded that he felt this was an excellent plan and would request their support.

COMMISSIONER HESS stated that clearly this was a precedence setting issue. He further stated that he would be happy to provide the hammer to drive Commissioner Heitel's stake. He reported that he was stunned that this even got through the Planning Department. It is embarrassing. He added that he would not support the increase in density.

COMMISSIONER HEITEL stated he did not begrudge any property owner the right to come before any public commission and make a request for a change in zoning because that is their right. He further stated that he was disturbed that they are asking to double the density without any overriding public benefit from staff. He commented that he did not think it was appropriate and hopes that staff starts to reevaluate what is driving their philosophy in bringing cases before them and supporting them other than they fit within the General Plan they are not obligated to do that.

VICE CHAIRMAN STEINBERG stated he shared his colleagues' comments. He further stated that after listening to the neighbors comments the issue of integrity came up and the fact that they bought in five to 10 acre lots because they love this lifestyle and want it to remain. When you look at a 19-acre site and take out 12 acres for NAOS they are left with seven acres for to be divided by nine they are approximately three-quarters of an acre per building envelope. He inquired how do they go from five acres to three-quarters of an acre and sleep at night. He remarked he couldn't. He remarked he felt they should send a message to the City Council that they want to preserve the integrity of north Scottsdale rural desert lifestyle. The reason they want to do it is because they love and they do not want to see it spoiled for economic gain. He concluded he was against this request because he felt it was inappropriate.

COMMISSIONER BARNETT stated he thought it was an economic decision. He further stated that he would agree with his colleagues' that they want to keep the open space and maintain the existing zoning.

COMMISSIONER NELSEN stated that he felt there was not a broad economic benefit of this project to the community. There is no local benefit. He further stated that he would not support this request. He commented that he would like to echo the sentiment of his colleagues. He further commented that he would question why this came forward with staff's approval. There has been considerable resentment to up zoning for about 10 years. He noted conforming to the General Plan is a scary term considering that city just re-classified about 3600 acres in north Scottsdale. He concluded that he hoped they don't see too many projects like this coming before them.

CHAIRMAN GULINO stated that he did not have a problem with what was being proposed. He further stated that he was a big believer in property rights. He commented that he supports the documents that this city puts out as guides to property owners. The General Plan would allow up to 19 homes on this property so it is not as though they are pushing the envelope in terms of density. He remarked regarding the number of lots without a site plan it is difficult for him to make a definitive decision but did not think it was unreasonable to ask for additional lots. He further remarked he was troubled that they received significant opposition from people living in zoning districts where the lots are 20,000 to 30,000 square feet. He further commented it is important to understand that this property as zoned today would be allowed to disturb 10 acres with roads and building envelopes. The proposal before them would decrease that 10 acres down to seven acres. This plan does preserve more of the desert. He concluded his preference would be to continue this and allow the applicant to go back and provide more information regarding the site planning.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 3-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR DENIAL. SECOND BY COMMISSIONER BARNETT.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1) WITH CHAIRMAN GULINO DISSENTING.

7-ZN-2003 (Tiffany Center) request by Jekel & Howard LLP, applicant, Southpac Trust International, owner, to rezone from Single Family Residential Planned Community District (R1-35 PCD) to Central Business District Planned Community District (C-2 PPCD) on a 3.5 +/- acre parcel located at the southwest corner of Bell Road and 91st Street.

MR. WARD presented this case as per the project coordination packet. Staff does not support this request but believes that Industrial Park (I-1 PCD) is the appropriate zoning for this site. Staff recommends denial to rezone the site to a commercial district, but would support rezoning of the site to I-1 Industrial Park or C-O Commercial Office districts. Should the Planning Commission support this case as submitted by the applicant, related stipulations are included in the report.

COMMISSIONER HEITEL stated that in 2000, the property owner requested to rezone the property to I-1 and now he is coming back and requesting a different zoning and staff is not supporting it and wants him to go back to I-1. He inquired if they were playing games with this guy. Mr. Ward stated the decision to deny the application was a decision by City Council and was one of the first cases to come in on Horseman's Park area and he did not know what the circumstances were. The current request is for the C-2, which they felt is more appropriate based on the how the Horseman's Park area has developed.

COMMISSIONER BARNETT stated the earlier case they had regarding the auto repair facility was within a regional use area and the argument there was that it was a supporting industry for the area. He further stated he would argue that a restaurant is a supporting use for all the people who work in that area. He inquired if they have a different argument for a regional use on a restaurant than a regional use auto repair facility. Mr. Ward stated the industrial district use does provide for restaurants as a service to support the surrounding industrial area but as a conditional use permit as well as office and some minor retail.

LOU JEKEL, Jekel & Howard, 8283 N. Hayden Road, reviewed the plan that was presented in 2000. He provided an overview of the proposed plan noting that he felt it is a much better plan. He remarked that it does not make any sense to require the employees at the Horseman's Park Industrial area to have to drive out to the 1001 south on Frank Lloyd Wright Boulevard to go to restaurants and stores. It makes sense to have some commercial. He reviewed the uses that are permitted in I-1. He remarked that he has met with the Homeowners Association for McDowell Mountain Ranch and they felt this would not have an impact on them. He further remarked he understands where staff is coming from but does not agree with their recommendation. He commented he could not think of a better regional use than to service this employment center. He concluded in spite of some of the legitimate concerns made by staff they felt the community would be best served by this approval.

COMMISSIONER BARNETT stated the applicant address staff's concerns with regard to I-1. He requested that the applicant address their alternative suggestions of commercial office space. Looking at the site plan other than the 4,000 square foot restaurant the rest of the building is commercial office space. He inquired about their position on commercial office. Mr. Jekel stated that obviously they believe the restaurant is very important. There is a lot of other support uses that could make this parcel viable and they need to make it viable from a business viewpoint. There are reasonable uses, but they believe they are going in the right direction and do justice to the area and do not harm the general overlay plan that the city is doing.

Commissioner Barnett stated in the staff report they have indicated should they not go with the I-1 zoning they have given them stipulations for the C-2 zoning. He inquired if the applicant agrees with those stipulations. Mr. Jekel stated he has reviewed the stipulations and they appear to be reasonable, but he is reserving the right to be wrong.

CHAIRMAN GULINO stated the traffic report indicates that there is not a problem. The staff presentation indicated there was a traffic increase but did not indicate there was a traffic problem. He inquired if there would be an increase in traffic.

TOBY WHITE, Kirkham Michael Consulting Engineers, stated the proposed development would generate a little more traffic over the course of the day than the previous use that generated more traffic during the peak hours so they would consider it wash.

CHAIRMAN GULINO inquired about staff's resistance to the I-1 zoning. Mr. Ward stated the original intent of the overlay was to have the service commercial located at the ends not intermixed. There could be some concerns for some long-term implications along the frontage of Bell Road and setting precedence. Mr. Grant stated they do have vacant commercial land in the area and because of the cost of the land industrial becomes very attractive for a lot of different kinds of uses. He discussed the reasons why they want to protect and keep their industrial zoned land.

COMMISSIONER NELSEN inquired if the last case did not set a precedence why did staff think there was precedence issue at this location. Mr. Grant stated there is the potential not only for the development of raw land to establish but also conversion of existing buildings to commercial uses.

Commissioner Nelsen stated he was still waiting to hear a compelling reason from staff that they should not do this.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 7-ZN-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

3-TA-2003 (Use Permit For Bars/nightclubs (citywide)) request by City of Scottsdale, applicant, for a Text amendment to amend Ordinance 455 (Zoning Ordinance) Article I., Administration and Procedures., Section 1.404.. Additional conditions for specific conditional uses.; Article III. Definitions.; Article V. 5.1200. (C-S) Regional Shopping Center., Sec. 5.1300. (C-1) Neighborhood Commercial District., Sec. 5.1400. (C-2) Central Business District., Sec. 5.1500. (C-3)

Highway Commercial District., Sec. 5.2400. (P.N.C.) Planned Neighborhood Center., Sec. 5.2700. (P.Co.C.) Planned Convenience Center., Sec. 5..2800 (W.P.) Western Theme Park District Article VII. General Provisions.

2-TA-2003 (Downtown Overlay – Six Month Review) request by City of Scottsdale, applicant, to amend City of Scottsdale Zoning Ordinance (Ordinance No. 455) Article VI., SUPPLEMENTARY DISTRICTS: Section 6.1200., (DO) DOWNTOWN OVERLAY.: Section 6.1201. Purpose.; Section Required.; Section 6.1230. Land Use Standards.; Section 6,1240 Land Use Classifications.; Section 6.1241. Residential Use Classifications.; Section 6.1242. Commercial Use Classifications.; Section 6.1250. Site Development Standards.; Section 6.1251. Additional Regulations.; Section 6.1260.. Parking Regulations.; Section 6.1270. Revitalization Bonus/Incentive Provisions.; Article IX., PARKING AND LOADING REQUIREMENTS; Section 9.104. Programs and incentives to reduce parking requirements.; Section 9.108. Special parking requirements in districts. The Downtown area is generally bounded by Chaparral Road on the north, Miller Road on the east, Earll Drive on the south and 68th Street on the west.

MS. WAUWIE presented cases 3-TA-2003 and 2-TA-2003 as per the project coordination packet. Staff recommends approval.

COMMISSIONER BARNETT asked staff to address the number of complaints they have received from bars outside of the downtown overlay that will now be falling under the criteria. He also asked if that is one of the reasons they are trying to pass this. Mr. Grant stated this came as a request from City Council. A couple areas have been of concern one is the amount of bar activity at Shea and Scottsdale Road and in areas where bars tend to locate. Outside of the downtown that is where the most concentration, but there are bars all over town that have a relationship with residential areas. This gives a higher level of review for those types of activities regardless of whether they have had complaints about them in the past.

Commissioner Barnett asked staff to address the expense and the time a bar owner would have to go through. Mr. Grant stated it would add a layer of review that currently does not exist. A use permit is on track for about 60 to 90 days and the liquor license is 20 to 60 days. He further stated the use permit would cost between \$900 to \$1,000 for the complete process.

COMMISSIONER NELSEN inquired about the unfairness of requiring a new business to jump through hoops that existing businesses does not. He stated he understood the Council's concern but it would seem the horse is already out of the barn on this one. Mr. Grant provided information regarding how they are addressing the equity issue. He stated this would provide the opportunity for those relationships that involve commercial next to residential a higher level of review and have to meet the use permit criteria that might make the residential

more comfortable with them being there. Commissioner Nelssen inquired if the enforcement issue is what is driving more bureaucracy because there are not enough resources to enforce the existing rules. Mr. Grant replied in the negative. He stated the ability to revoke is a very strong mechanism. Commissioner Nelssen inquired if the existing establishments that do not have a use permit would have less inspection. Mr. Grant replied they would not have the ability for revocation. Not to say they don't have enforcement mechanisms.

Commissioner Nelssen stated it seems they would be attracting certain type patrons to certain establishments because a use permit would not govern them. Mr. Grant stated he did not think that would be the case. The use permit provided a mechanism for making sure that what ever commitments are made in the public hearing process are subscribed to.

Commissioner Nelssen stated in the long run if this moves forward would this save the city money relative to police resources or code enforcement. Mr. Grant replied he was not sure.

VICE CHAIRMAN STEINBERG inquired if existing bars were exempt from going through the use permit process and would be grandfathered. Mr. Grant replied in the affirmative.

COMMISSIONER HEITEL inquired how they would be equitable to property owners regarding disrupting the existing balance of daytime and nighttime uses. Mr. Grant stated there would be a certain amount of judgment in the granting of these use permits. The Planning Commission and City Council will make a determination whether the business is going to impact an area.

Commissioner Heitel inquired if they were going to stifle diversity of uses that get created in downtown areas without all these overriding regulations this bureaucracy telling private enterprise which store front to occupy. Mr. Grant stated at the time the use permit is granted a determination is made whether that use can be operated in a way that impacts can be effectively addressed and mitigated.

COMMISSIONER BARNETT inquired about the logic behind grandfathering existing businesses. Ms. Boomsma stated once someone has an established use, you cannot take it away without paying them. She further stated there are lots of grandfathering rules throughout the zoning ordinance. She noted as long as the business stays the same use and same intensity they have the right until they abandon that use.

COMMISSIONER NELSEN inquired if the use permit goes with the applicant/owner or stays with the street address. Ms. Boomsma replied it runs with the land. Commissioner Nelssen inquired what would happen if it is

destroyed by a fire. Ms. Boomsma stated if a fire destroys it then they do not have to allow it to be rebuilt and that came up on several occasions because there are some basic unfairness felt by the property owners.

Commissioner Nelssen inquired if there would be time stipulations. Ms. Boomsma stated there could be but it is not in the current version of the ordinance.

COMMISSIONER HEITEL inquired if a non-conforming use changes ownership and has to change the liquor license will that trigger the property owner to have to then apply for a use permit. Ms. Boomsma replied in the negative. Mr. Grant outlined situations where an establishment would be required to come into conformity.

CHAIRMAN GULINO inquired why they don't tie this to the liquor license. Mr. Grant stated historically that is how it has been done and they have had criticisms from within and without the entertainment industry. Business were applying for a series 12 restaurant liquor license but operating as a bar without paying the substantial amount for the bar license.

Chairman Gulino inquired if they solved all of the issues that were brought up during the last public hearing. Mr. Grant replied in the affirmative.

Chairman Gulino inquired if they have a State liquor license process why do these have to go before the City Council. Mr. Grant stated the City Council does not make the decision but they send a recommendation to the State Liquor Board.

Chairman Gulino inquired if there were any redundancies that they need to be sensitive to between what they are proposing and the State process. Mr. Grant stated the paths are separate. Ms. Boomsma provided information between the State process and the City process.

Chairman Gulino inquired about the conclusion the staff drew about the inequity issue. Mr. Grant stated staff and City Council have discussed this issue. The City Council wants to see the consistency in application. He further stated with the proposed ordinance all bars would go through the same use permit process.

COMMISSIONER BARNETT MOVED TO FORWARD CASE 2-TA-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

COMMISSIONER BARNETT MOVED TO FORWARD CASE 3-TA-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.

THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0).

CHAIRMAN GULINO stated during the City Lights case the discussion became a little heated and he wanted to remind the Commissioners' they need to be a little easier on staff. They go through a lot and are being pulled in a lot of directions. It is not fair to assume that what they are presenting is their own doing. Let's not shoot the messengers. It is important to keep in mind they have a tough job. Mr. Grant stated he appreciated that, but he would like to point out this a continual learning process and they don't take it personally. This is an opportunity for them to learn what the expectation is.

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 8:30 p.m.

Respectfully Submitted,

"For the Record " Court Reporters